

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

**JON L. NEIMAN and FRANCES E.
NEIMAN, individually, and TRI-R
ANGUS, INC., a Nebraska corporation,**
Plaintiffs and Judgment
Debtors,

vs.

**NEIMAN AND NEIMAN
CORPORATION, a Nebraska
corporation,**
Defendant and
Judgment Creditor,

and
**TROY J. NEIMAN, CAROL JEAN
LEWIS, and JON R. NEIMAN, Trustees
of the Jon L. Neiman Irrevocable Trust
dated September 9, 1977,**
Defendants.

Case No. CI99-85

**ORDER DENYING
APPLICATION**

DATE OF HEARING: April 22, 2003.
DATE OF RENDITION: May 29, 2003.
DATE OF ENTRY: See court clerk's file-stamp date per § 25-1301(3).
APPEARANCES:
For judgment creditor: Eric A. Scott.
For judgment debtors:
JLN and FEN: No appearance.
Tri-R Angus: William S. Dill.
SUBJECT OF ORDER: Application to determine garnishee liability.
PROCEEDINGS: See journal entry rendered following hearing.
FINDINGS: The court finds and concludes that:

1. The underlying judgment for this garnishment proceeding was transcribed from the District Court of Grant County. Neiman and Neiman Corporation (the judgment

creditor) obtained a judgment against Jon L. Neiman and Frances E. Neiman (the Neimans), and against Tri-R Angus, Inc., (Tri-R) jointly and severally.

2. The judgment creditor filed two affidavits and praecipes for garnishment summonses to issue to Tri-R, as garnishee allegedly holding property for the Neimans. One affidavit and praecipe sought garnishee summons against Tri-R for the judgment debt of Jon L. Neiman. The other sought garnishee summons against Tri-R for the judgment debt of Frances E. Neiman. No answers to the interrogatories were filed on behalf of Tri-R.

3. The judgment creditor then filed an application for determination of garnishee liability. The judgment creditor served notice upon Tri-R, but did not serve notice upon the Neimans. The application asserted that the garnishment sought to reach corporate stock of the Neimans in Tri-R. The hearing followed.

4. Clearly, under § 25-1028, upon Tri-R's failure to answer the garnishment interrogatories, it was presumed indebted to the Neimans in the full amount of the judgment. However, the judgment creditor did not seek judgment against the garnishee as contemplated by § 25-1028. Of course, the judgment creditor already had and has a judgment against Tri-R, which was jointly and severally liable with the Neimans on the Grant County judgment.

5. Instead, the judgment creditor filed an application for determination of garnishee liability under § 25-1030. The judgment creditor maintains that garnishment proceedings can reach the Neimans' corporate stock in Tri-R. This appears correct. *Danbom v. Danbom*, 132 Neb. 858, 273 N.W. 502 (1937). However, garnishment is a legal, not equitable, remedy unknown at common law and is a purely statutory remedy. *Torrison v. Overman*, 250 Neb. 164, 549 N.W.2d 124 (1996). Being in derogation of common law, garnishment statutes are strictly construed and demand compliance with all prerequisites before any remedy is available under such statutes. *Id.* Because the judgment creditor failed to give the Neimans notice of the application, this court cannot now grant the requested relief.

6. However, such failure would not necessarily terminate this garnishment proceeding. If the garnishment summonses were properly served and application for determination of garnishee liability timely filed, the failure to initially give the notice required by § 25-1030.01 might simply mean that proper notice must be given and a new hearing held.

7. However, the file in this case shows that the judgment creditor failed to strictly comply with § 25-1011(2), which requires that the “judgment creditor . . . shall send to the judgment debtor by certified mail . . . a copy of the summons and order of garnishment” NEB. REV. STAT. § 25-1011(2) (Reissue 1995). The return shows that the garnishee summons pertaining to Jon L. Neiman was mailed to Frances E. Neiman rather than Jon L. Neiman. Similarly, the return shows that the garnishee summons pertaining to Frances E. Neiman was mailed to Jon L. Neiman rather than Frances E. Neiman. Because the service of the garnishment summonses failed to comply with § 25-1011(2), the application for garnishee liability cannot support the requested relief. The application must be denied and the garnishee discharged as to the garnishment summonses served upon Tri-R on or about April 4, 2003.

ORDER:

IT IS THEREFORE ORDERED that:

1. This application to determine garnishee liability is denied and the garnishee, Tri-R Angus, Inc., is released and discharged from any garnishee liability relating to the garnishment summonses served on or about April 4, 2003.

2. All requests for attorneys’ fees, express or implied, are denied. All claims of all parties not otherwise disposed above are denied. This is a final order.

Signed in chambers at **Ainsworth**, Nebraska, on **May 29, 2003**;
DEEMED ENTERED upon file stamp date by court clerk.

If checked, the court clerk shall:

☒ Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.

☒ Note the decision on the trial docket as: [date of filing] **Signed “Order Denying Application” entered.**
Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge